

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D. C. 20554

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Federal Communications Commission  
Office of the Secretary

In re Matter of  
Advanced Television Systems  
and Their Impact Upon the  
Existing Television Broadcast  
Service.

MM DOCKET NO. 87-268

To: The Commission

COMMENTS

Brooks Broadcasting ("Brooks") was recently granted a permit for construction of a new television station on Channel 61 in Phoenix, Arizona. Brooks hereby provides the following comments with respect to the Commission's Notice of Proposed Rule Making, FCC 91-337, released November 8, 1991 ("Notice"), in the advanced television systems docket.

Brooks understands that comments are being filed this day by a number of broadcast entities under the caption Joint Broadcaster Comments. In almost all respects, Brooks believes that the Joint Broadcaster Comments are well taken and should be reflected in the Commission's adoption of a report and order in this proceeding.

However, Brooks understands that the Joint Broadcasters may take the position that television station licensees should receive a preference over television station permittees in the

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allotment of spectrum for HDTV. Brooks strongly disagrees with this approach. There is no reason for limiting the initial pool of those eligible for HDTV authorizations in a given area to existing licensees, while treating permittees as second-class broadcast citizens.

Under the Commission's rules providing for "self-granting" program test authority, 47 C.F.R. § 73.1620, any broadcast permittee not proposing the use of a directional antenna may commence operations immediately upon the completion of construction without waiting for the filing, much less a grant, of its license application. Under Section 319 of the Communications Act of 1934, as amended, the granting of the license to cover the permit amounts to a mere formality confirming that a permittee has constructed the station in accordance with the terms of the permit. Because of the relatively insignificant nature of license applications, they are not given any priority in processing triage. Therefore, stations frequently broadcast for more than a year (sometimes as much as four years) on the authority of the construction permit alone, before any license is granted.

The substantive review of an applicant's proposal takes place during the pendency of the construction permit application. Under Section 319, all objections to a given proposal are to be submitted before the construction permit is granted.

Accordingly, the class of station permittees includes both stations which are on the air now as well as stations not yet

on the air but whose owners have invested hundreds of thousands of dollars toward the television station project in question. Such entities therefore do not deserve to be relegated to a lower priority than companies which have already received operating licenses. Indeed, existing licensees are more likely to have recouped more of their investment in their initial NTSC authorizations, and thus may be less deserving of a preference in the eventual allotment of HDTV frequencies.

For the above reasons, in those cases where there is a shortage of available spectrum, the Commission should not exclude television station permittees from the initial pool of parties eligible for those authorizations. Rather, both permittees and licensees should be placed on equal footing in qualifying for the available HDTV authorizations.

In other respects, Brooks generally endorses the positions of the Joint Broadcasters. However, Brooks believes that, in order to ensure the viability of broadcast HDTV and the consequent benefit to the public, the Commission should unequivocally mandate that cable systems carry any station undertaking HDTV broadcasts, without impairing carriage of that station's NTSC signal. Only in that way will all cable subscribers be assured

of convenient access to the broadcasts of permittees and licensees who, unique among program providers, are obligated to program in the public interest.

Respectfully submitted,

BROOKS BROADCASTING

By: Gregory R. Brooks  
Gregory R. Brooks  
Sole Proprietor

BROOKS BROADCASTING  
947 East Longhorn Circle  
Chandler, Arizona 85249

December 20, 1991

CERTIFICATE OF SERVICE

I, V. Frappier, hereby certify that I have, this 20th day of December, 1991, caused to be sent by U.S. first-class mail, postage-prepaid, a true and correct copy of the foregoing "Comments" to the following:

Charles W. Logan, Esquire  
Covington & Burling  
1201 Pennsylvania Avenue, N.W.  
Box 7566  
Washington, D.C. 20044

A handwritten signature in dark ink, appearing to read 'V. Frappier', written over a horizontal line.